

**REPORT ON THE
STATE
PILOTAGE COMMISSION
Mobile, Alabama**



**Department of
Examiners of Public Accounts**

**50 North Ripley Street, Room 3201
P.O. Box 302251
Montgomery, Alabama 36130-2251**

Ronald L. Jones, Chief Examiner

State of Alabama
Department of
Examiners of Public Accounts

Telephone (334) 242-9200
FAX (334) 242-1775

Ronald L. Jones
Chief Examiner

Mailing Address:
P.O. Box 302251
Montgomery, AL 36130-2251

Location:
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, AL 36104-3833

June 29, 2005

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **State Pilotage Commission** in accordance with the ***Code of Alabama 1975***, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **State Pilotage Commission**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

CONTENTS PAGE

COMMENTS	1
PROFILE	1
STATUS OF PRIOR FINDINGS.....	3
ORGANIZATION	5
PERSONNEL	5
PERFORMANCE CHARACTERISTICS	5
FINANCIAL INFORMATION.....	6
SCHEDULE OF FEES	6
SCHEDULE OF OPERATING RECEIPTS, DISBURSEMENTS, AND BALANCES.....	7
OPERATING RECEIPTS V. OPERATING DISBURSEMENTS (CHART)	8
APPENDICES	9
STATUTORY AUTHORITY	9
BOARD MEMBERS	36

COMMENTS

Following a review by the Sunset Committee in 2003, the Pilotage Commission was instructed by the Sunset Committee to have its attorney make a full review of its existing statutes and existing rules to determine conflicts between them and to bring any needed changes to the legislature.

Act 2004-85, enacted from the commission's sunset bill, continued the Pilotage Commission for only two years (rather than the usual 4 years) until October 1, 2006 in order to review the commission's progress.

This report was prepared to determine what remedial actions were taken to correct improper conditions found during the Sunset Committee's review of the commission in 2003.

PROFILE

Purpose/Authority

The State Pilotage Commission was created by Act No. 81, Acts of Alabama 1931 to regulate the piloting of all ships and watercrafts into and out of the waters of Mobile Bay, Mobile River and all tributary streams flowing into Mobile Bay and Mobile River. The commission licenses bar pilots and determine the qualifications of applicants to be apprenticed and branched (licensed) as bar pilots. The Pilotage Commission operates under authority of the *Code of Alabama 1975*, Sections 33-4-1 through 33-4-57.

BOARD CHARACTERISTICS

Members	3
Term	6 years
Selection	Appointed by the Governor (member serves until his successor is qualified)
Qualifications	Citizen of the United States and qualified elector of Alabama (1) member must be an active bar pilot licensed by the State Pilotage Commission. (1) member must be a businessman or professional licensed by the State of Alabama. (1) member must be an official of a steamship company in Mobile.
Racial Representation	No statutory requirement.

	No minority race representation
Geographical Representation	1 member must be an official of a steamship company in Mobile
Consumer Representation	No statutory requirement
Other Representation	No statutory requirement
Compensation	Traveling expenses only.
<u>OPERATIONS</u>	
Location	P. O. Box 273, Mobile, AL 36601 (Office located in Building 50, Room 114, Alabama State Docks Boulevard, Mobile, AL)
Examinations	The commission prepares and administers a written examination
Renewal	Annually
Licensees	12 active bar pilots
Reciprocity	None.
Continuing Education	None required
Employees	The commission employs one white female secretary. The employment of the commission's secretary is by oral agreement with the members of the commission documented in minutes of commission meetings. The secretary's salary has been set at \$1,000 per month by the commission. The secretary has no set office hours and works on an "as needed basis."
Legal Counsel	Private Attorney
Internet Presence	None
Attended Board Member Training	No attendance

FINANCIAL

Source of Funds	Privilege taxes, fees, and assessments – Licensed bar pilots may be assessed any reasonable additional amount necessary for the performance of commission duties.
State Treasury	No. Funds are maintained in a bank account.
Unused Funds	Unexpended funds are retained by the commission – any unused funds in excess of \$5,000.00 at year end must be transferred to the State Treasury.

STATUS OF PRIOR FINDINGS

1. **The Pilotage Commission adopted administrative rules in conflict with state law.**
 - A. **The commission's administrative rule 710-X-1-.09 (3)(vii) improperly expands state law by requiring a college education in order for an applicant to fill a slot on the commission's register of applicants. *Attorney General Opinion 2002-088* to the commission regarding this rule stated, "It is the Opinion of this Office that the language of the regulation as written requires an applicant to have a college degree. The Commission may not institute a requirement that is higher than the minimum requirements stated in the Code." This conflicting rule has been a significant item in sunset reviews and compliance examinations conducted by the Department of Examiners of Public Accounts for several years and continues despite the Attorney General's opinion that the rule is improper.**

Current Status – There has been no change to the rule.

- B. **The commission has recently adopted improper modifications to its rule 710-X-1-.09 (3) (i) addressing age requirements for applicants for apprenticeship.** Rule 710-X-1-.09 (3) (i) was modified to include a requirement that an applicant for apprenticeship must be "a maximum age of 35 years". The *Code of Alabama* 1975, Section 33-4-31 specifically addresses the qualifications and the age requirements for applicants and states that, "In order to prevent delays in the apprenticeship and branching of bar pilots, the commission shall when necessary maintain a register of applicants containing no more than nine applicants for apprenticeship, *who must be not less than 18 years of age*". In addition, the *Code of Alabama* 1975, Section 33-4-3 1(e) states that, "*No person may be selected for apprenticeship prior to his or her twenty-first birthday*" which authorizes the commission to select an applicant for apprenticeship at any time on or after his or her twenty-first

birthday, a condition that cannot occur under the board's modified rule. It is improper for the commission to add additional mandatory requirements when the statutes have addressed mandatory requirements. Attorney General's Opinion 2002-088 to the commission states that, "The Commission may not institute a requirement that is higher than the minimum requirements stated in the Code."

Current Status – The age requirements have been removed from the rule.

- C. The commission has recently adopted improper modifications to its rule 710-X-1-.09 (3) (iv) that imposes residency requirements for applicants for apprenticeship.** Rule 710-X-1-.09 (3) (iv) was modified to include a requirement that an applicant must be "a permanent resident of the State of Alabama for six (6) consecutive months immediately preceding submission of application for apprenticeship". The *Code of Alabama 1975*, Section 33-4-31 specifically addresses the qualifications for applicants for apprenticeship and includes no residency requirement. It is improper for the commission to add additional mandatory qualifications when the statutes have addressed mandatory qualifications. Attorney General's Opinion 2002-088 to the commission states that, "The Commission may not institute a requirement that is higher than the minimum requirements stated in the Code." In addition, the residency requirement may be unconstitutional.

Current Status - The 6-month residency requirement preceding application has been removed.

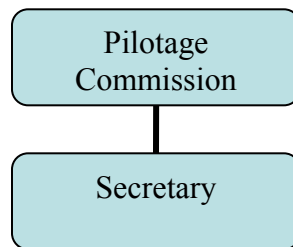
- 2. Statutory Residency Requirement may be Unconstitutional.** The *Code of Alabama 1975*, Section 33-4-34 states that a person, to be eligible to be branched or licensed as the next bar pilot, must at the time of branching or licensing, "be citizen of the United States and of Alabama". This citizenship requirement may not be constitutional. Under this provision, a person who becomes a citizen of another state, such as Mississippi or Florida could not become a bar pilot under Alabama law, even though all other prerequisite conditions may have been met.

Current Status – The statute remains unchanged. No bill has been introduced to remove the Alabama citizenship requirement.

- 3. Language in a provision of the commission's licensing law renders the provision inoperable.** The *Code of Alabama 1975*, Section 33-4-6 states that, "The state pilotage commission shall elect a secretary, who may be a member of the commission, and who shall be paid an annual salary not to exceed the amount set by statute out of the treasury of the commission." There is no amount set by statute.

Current Status - In response to this item the commission, in its June 8, 2004 meeting, proposed remedial action by changing its administrative rules to read: "The State Pilotage Commission shall elect a secretary, who may be a member of the Commission, and who shall be paid an annual salary not to exceed the amount set by the Commissioners out of the treasury of the Commission." While this action may practically resolve the situation, the statute remains deficient. No bill has been introduced to remedy the statute.

ORGANIZATION



PERSONNEL

The commission employs one white female secretary. The employment of the commission's secretary is by oral agreement with the members of the commission documented in minutes of commission meetings. The secretary's salary has been set at \$1,000 per month by the commission. The secretary has no set office hours and works on an "as needed basis." Legal services for the Commission are provided by a private attorney.

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 12

Total Expenditure per Licensee (2003-2004 fiscal Year) - \$ 3304.65

Notification to Licensees of Board decisions to Amend Administrative Rules

The board complied with procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules.

Investigation of Complaints

There are no complaints on record.

Complaint Resolution

The commission stated that no complaints have been filed.

FINANCIAL INFORMATION

The commission operates from a bank checking account. The *Code of Alabama 1975*, Section 33-4-6 provides that, "...all moneys collected by him [the secretary] shall be deposited in a bank or banks designated by the commission and drawn out by check signed by the chairman and the secretary of the commission."

Schedule of Fees

<u>Fee</u>	<u>Statutory Authority</u>	<u>Amount</u>
Branch Fee	<i>Code of Alabama 1975</i> , Section 33-4-13	\$10.00
License Tax	<i>Code of Alabama 1975</i> , Section 33-4-38	100.00
Assessments	<i>Code of Alabama 1975</i> , Section 33-4-38	
Taking and filing of bond and affidavit	<i>Code of Alabama, 1975</i> , Section 33-4-13	1.00
Giving copy from records	<i>Code of Alabama, 1975</i> , Section 33-4-13	\$.20 for every 100 words
For certifying of same		\$.50

The Pilotage Commission receives the \$10 branch fee only when a new bar pilot is licensed. Annual license receipts are limited to \$100 per licensed bar pilot. The revenue collected does not cover the normal operations of the commission. Additional operating funds are assessed to the licensed bar pilots.

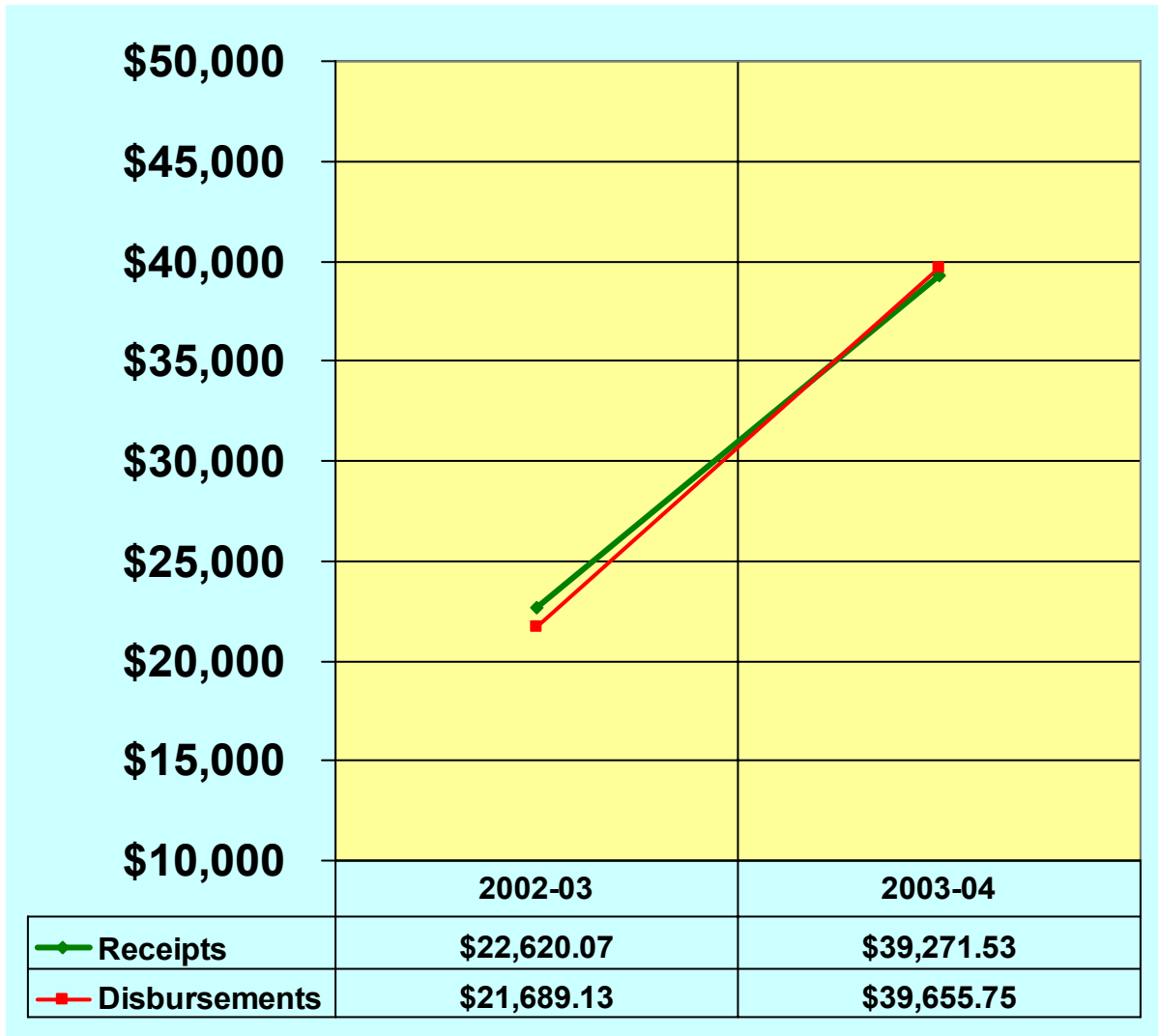
The *Code of Alabama 1975*, Section 33-4-38 levies upon each licensed bar pilot any reasonable additional assessment that arises and is necessarily incurred out of the performance of its duties by the Pilotage Commission. Rather than each bar pilot paying individually, the Mobile Bar Pilots Association pays the assessments.

Schedule of Operating Receipts, Disbursements, and Balances

October 1, 2002 through September 30, 2004

	<u>2002-2003</u>	<u>2003-2004</u>
<u>Receipts</u>		
License Tax and Fees	\$ 1,200.00	\$ 1,200.00
Assessments to Licensees	21,420.07	38,071.53
Total	22,620.07	39,271.53
<u>Disbursements</u>		
Personnel Costs	12,400.00	14,400.00
Employee Benefits	948.60	1,101.60
Rentals and Leases	2,834.34	2,908.48
Professional Services	5,110.07	19,701.53
Supplies, Materials & Operating Expenses	396.12	1,544.14
Total	21,689.13	39,655.75
Excess (Defficiency) of Receipts		
Over Disbursements	930.94	(384.22)
Cash Balance at Beginning of Year	1,942.64	2,873.58
Cash Balance at End of Year	\$ 2,873.58	\$ 2,489.36

Operating Receipts v. Operating Disbursements (chart)



APPENDICES

Statutory Authority

CHAPTER 4. PILOTS AND PILOTAGE.

ANNOTATIONS

CASENOTES

Power to enact pilotage laws 2 enter p
Relationship to other laws 1 enter p

1. Relationship to other laws

State Pilotage Act is not inconsistent with the United States Shipping Act. *Dorgan v. State*, 29 Ala.App. 362, 196 So. 160 (Ala.App.1940). Pilots 3

2. Power to enact pilotage laws

State pilotage laws, though regulations of commerce, are within power of state until such power is abrogated by Congress. *Dorgan v. State*, 29 Ala.App. 362, 196 So. 160 (Ala.App.1940). Commerce

The right of states to enact pilotage laws is by power originally and not by that conferred by the United States. *Dorgan v. State*, 29 Ala.App. 362, 196 So. 160 (Ala.App.1940). Pilots

ARTICLE 1. STATE PILOTAGE COMMISSION.

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Acts 1992, No. 92-116, § 2 provides: "The existence and functioning of the State Pilotage Commission, created and functioning pursuant to Sections 33-4-1 to 33-4-14, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 710-X-1-.01, State Pilotage Commission; Brief Description of the

State Pilotage Commission, etc.

§ 33-4-1. Composition; powers and duties generally. [Historical Notes](#) [References](#)
[Annotations](#)

There shall be a board of pilotage commissioners, to be known as the State Pilotage Commission, which shall consist of three members, one to be an official of a steamship company which maintains an office in Mobile, one to be an active bar pilot, licensed and branched by such State Pilotage Commission, and one to be a business man or in a professional occupation licensed by the State of Alabama. Such State Pilotage Commission shall have such powers and duties as are prescribed in this chapter and as may hereafter be prescribed by law.

(Acts 1931, No. 81, p. 154, § 1; Code 1940, T. 38, § 46; Acts 1961, Ex. Sess., No. 104, p. 2024, § 1.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Acts 1992, No. 92-116, § 2 provides: "The existence and functioning of the State Pilotage Commission, created and functioning pursuant to Sections 33-4-1 to 33-4-14, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Acts 1996, No. 96-783, § 2, provides: "The existence and functioning of the State Pilotage Commission, created and functioning pursuant to Sections 33-4-1 to 33-4-57, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2000-130, § 2 provides: "The existence and functioning of the State Pilotage Commission, created and functioning pursuant to Sections 33-4-1 to 33-4-57, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2004-85, § 2 provides: "The existence and functioning of the State Pilotage Commission, created and functioning pursuant to Sections 33-4-1 to 33-4-57, Code of Alabama 1975, is continued until October 1, 2006, and those code sections are expressly preserved."

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 710-X-1-.02, State Pilotage Commission; Establishment and Operation.

LIBRARY REFERENCES

American Digest System:

Pilots 4.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

ANNOTATIONS

CASENOTES

Relationship to other laws 1 enter p

State agency 2 enter p

1. Relationship to other laws

State Pilotage Commission is an "employer" within the meaning of the Federal Age Discrimination in Employment Act (29 U.S.C.A. § 630). *Adams v. Leatherbury*, 388 So.2d 510 (Ala.1980).

2. State agency

State Pilotage Commission is a state agency. *Adams v. Leatherbury*, 388 So.2d 510 (Ala.1980).

Cited in *James v. Wallace*, 533 F.2d 963, 12 Empl. Prac. Dec. (CCH) ¶ 11001 (5th Cir. Ala.1976).

§ 33-4-2. Qualifications of commissioners. [References](#)

All of the members of said commission, at the time of their appointment and during their respective terms of office, shall be citizens of the United States and qualified electors of the State of Alabama.

(Acts 1931, No. 81, p. 154, § 4; Code 1940, T. 38, § 49.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots 4.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-3. Terms, compensation and traveling expenses of commissioners. [References](#) [Annotations](#)

The Governor shall appoint said commissioners to hold office for six years from the dates of the expiration of their respective commissions and until their successors are qualified. The commissioners shall serve without compensation, but all traveling expenses incurred by the commissioners in the performance of their duties shall be paid out of funds in the treasury of the commission.

(Acts 1931, No. 81, p. 154, § 2; Code 1940, T. 38, § 47.)

REFERENCES

CROSS REFERENCES

As to travel expenses of public officers and employees, see §§ 36-7-20 et seq.

LIBRARY REFERENCES

American Digest System:

Pilots 4.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

ANNOTATIONS

CASENOTES

Generally 1 enter p

1. Generally

State Pilotage Commission is a state agency. *Adams v. Leatherbury*, 388 So.2d 510 (Ala.1980).

§ 33-4-4. Bond of commissioners. [References](#)

Before entering upon the duties of their office, the commissioners shall execute to the State of Alabama a bond, to be approved by the Governor, in the amount of \$1,000.00, for the faithful performance of their duties.

(Acts 1943, No. 122, p. 123, § 1; Acts 1961, Ex. Sess., No. 208, p. 2190, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots 4.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-5. Chairman; acting chairman. [References](#)

The commissioners shall elect a chairman to preside at its meetings. It shall be the further duty of the chairman to supervise the official conduct of all the officers and employees of the commission. He may administer official oaths to the officers and employees of the commission, except the other commissioners, and to all other persons in relation to the business of the commission. In the absence of the chairman, the remaining commissioners shall select from their number an acting chairman to hold office during the absence of the chairman. The acting chairman shall have all the power and authority possessed by the chairman.

(Acts 1931, No. 81, p. 154, § 5; Code 1940, T. 38, § 50.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots 4.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-6. Secretary. [References](#)

The State Pilotage Commission shall elect a secretary, who may be a member of the commission, and who shall be paid an annual salary not to exceed the amount set by statute out of the treasury of the commission. Before entering upon the duties of his office, the secretary shall execute to the State of Alabama a bond, to be approved by the Governor, in the amount of \$3,000.00, for the faithful performance of his duties. He shall safely keep and be responsible for all moneys paid into the office of the commission, and for all books and papers of the commission, and attend such meetings and keep a perfect record of their proceedings and of the names of the commissioners present thereat. He must keep in proper books accounts of all moneys received and paid, and once every three months he must prepare three statements showing all moneys received and paid for the preceding three months and have same show the source from which said moneys were received and the purpose for which they were paid, and one copy shall be given to each of the commissioners. All moneys collected by him shall be deposited in a bank or banks designated by the commission and drawn out by check signed by the chairman and secretary of the commission.

(Acts 1931, No. 81, p. 154, § 7; Code 1940, T. 38, § 52; Acts 1943, No. 122, p. 123, § 1; Acts 1961, Ex. Sess., No. 208, p. 2190, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-7. Meetings. [References](#)

The commissioners shall meet at least once every three months at such time and place as may be by them selected and may meet oftener as business requires.

(Acts 1931, No. 81, p. 154, § 6; Code 1940, T. 38, § 51.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-8. Vacancies in office. [References](#)

If a vacancy occurs from any cause in the office of a commissioner before the expiration of his term, his successor must be appointed by the Governor and hold office only for the unexpired portion of such term.

(Acts 1931, No. 81, p. 154, § 3; Code 1940, T. 38, § 48.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-9. Territorial jurisdiction. [References](#)

The jurisdiction of said commission, under this chapter, shall extend over the waters of Mobile Bay, Mobile River and over all tributary streams flowing into Mobile Bay and Mobile River in which the tide ebbs and flows, extending to the outer bar below Fort Morgan, Alabama, in the Gulf of Mexico.

(Acts 1931, No. 81, p. 154, § 8; Code 1940, T. 38, § 53.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-10. No jurisdiction over harbor masters. [References](#)

The State Pilotage Commission shall not have jurisdiction over Harbor Masters or deputy masters in any harbor or seaport in the State of Alabama.

(Acts 1931, No. 611, p. 756, § 2; Code 1940, T. 38, § 54.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-11. Authority to make rules and regulations, etc. [References](#)

The State Pilotage Commission shall have the power and authority to make all necessary rules and regulations, regulating the piloting of ships and all watercrafts into and out of any harbor or seaport in the State of Alabama. The State Pilotage Commission shall also have the power and authority to require evidence of the physical and mental fitness of any active bar pilot at any time and to make rules and regulations regarding the physical and mental capacity of such active bar pilots.

(Acts 1931, No. 611, p. 756, § 1; Code 1940, T. 38, p 55; Acts 1961, Ex. Sess., No. 104, p. 2024, § 2.)

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 710-X-1-.04, State Pilotage Commission; Form of Petition, etc.

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-12. Civil actions to recover forfeitures. [References](#)

The commissioners may, in their own names as commissioners, or in that of their chairman as such, bring civil actions for and recover any forfeiture accruing under this chapter not otherwise specifically appropriated.

(Acts 1931, No. 81, p. 154, § 31; Code 1940, T. 38, § 76.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-13. Fees. [References](#)

The fees of the commissioners are as follows: For every branch granted, \$10.00; for taking and filing bond and affidavit, \$1.00; giving copy from records, for each 100 words, \$.20; for certifying same, \$.50.

(Acts 1931, No. 81, p. 154, § 30; Code 1940, T. 38, § 75.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

§ 33-4-14. Records. [References](#)

The commissioners shall preserve in a well-bound book a record of their acts and of the rules and regulations adopted by them for the direction and government of pilots. They shall also preserve upon record a list of all persons appointed pilots by them, and of those whom they may declare to have forfeited their licenses. All persons interested shall have access to and be permitted to take copies of the record, and copies from such records, certified by the chairman, are presumptive evidence of the facts stated therein. (Acts 1931, No. 81, p. 154, § 29; Code 1940, T. 38, § 74.)

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 710-X-1-.03, State Pilotage Commission; Forms, etc.

LIBRARY REFERENCES

American Digest System:

Pilots.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 5.

ARTICLE 2. PILOTS GENERALLY.

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 710-X-1-.05, State Pilotage Commission; Fitness of Pilots.

18 Ala. Admin. Code 710-X-1-.06, State Pilotage Commission; Mobile Harbor Speed Limit.

18 Ala. Admin. Code 710-X-1-.07, State Pilotage Commission; Vessels to Be Served in

Timely Manner.

§ 33-4-30. Number of pilots; application, examination and certification required for license. [Historical Notes](#) [References](#) [Annotations](#)

(a) At no time shall there exist more apprentices or pilots than are reasonably necessary to meet the requirements of commerce, the number of apprentices and pilots to be left to the reasonable discretion of the State Pilotage Commission.

(b) The commission shall be the sole judge of the seniority and statutory qualifications of applicants to be apprenticed and branched.

(Acts 1931, No. 81, p. 154, § 9; Code 1940, T. 38, § 56; Acts 1990, No. 90-630, p. 1154, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1990 amendment, effective April 25, 1990, rewrote this section.

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 710-X-1-.09, State Pilotage Commission; Register of Applicants.

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

ANNOTATIONS

CASENOTES

Generally 1 enter p

Constitutionality 2 enter p

Removal from register 3 enter p

1. Generally

Since statute does not expressly provide that it shall take precedence over the Alabama Administrative Procedure Act (AAPA) or any part of the AAPA, the AAPA must take precedence over statutes giving the Commission its powers and the Commission is subject to provisions of the AAPA; thus, courts can review the decisions of the Commission in contested cases under the provisions for appeal outlined in the AAPA. *Scott v. State Pilotage Com'n*, 699 So.2d 196 (Ala.Civ.App.1997).

2. Constitutionality

Statute vesting Commission with exclusive authority to which applicants might be apprenticed is not unconstitutional for precluding judicial review of administrative matters. *Scott v. State Pilotage Com'n*, 924 F.Supp. 1140 (S.D.Ala.1996). Pilots

3. Removal from register

Circuit court did not have subject matter jurisdiction over suit against State Pilotage Commission contesting removal of applicant's name from register of applicants to be bar pilots in Mobile Bay; applicant had no property right to position on register. *Barry v. State Pilotage Com'n*, 706 So.2d 1234 (Ala.Civ.App.1997), rehearing denied, certiorari denied. Pilots

Cited in *Ex parte State Pilotage Com.*, 496 So.2d 780 (Ala.1986).

§ 33-4-31. Qualifications; age limitations for apprentices. [Historical Notes](#)

[References](#) [Annotations](#)

(a) In order to prevent delays in the apprenticeship and branching of bar pilots, the commission shall when necessary maintain a register of applicants containing no more than nine applicants for apprenticeship, who must be not less than 18 years of age.

(b) Applicants for apprenticeship from the register of applicants will be considered by the commission for apprenticeship in order of their seniority which shall be based upon the date of completion of all requirements to be a bar pilot except apprenticeship, application to be a pilot, passage of the commission's written examination and branch, which requirements are set out in subdivisions (2), (3) and (5) of Section 33-4-34.

(c) No person may commence his or her apprenticeship unless the commission finds that (i) the applicant meets all statutory requirements for apprenticeship required by subsection b above, and (ii) there is a need for an apprentice.

(d) An apprentice must, in order to complete the apprenticeship, (i) complete, to the satisfaction of the commission, at least six months as an apprentice pilot or (ii) make, to the satisfaction of the commission, at least 50 round trips with a branched pilot on vessels in Mobile Bay which are subject to the statutory requirement of compulsory pilotage, whichever first occurs.

(e) No person may be selected for apprenticeship prior to his or her twenty-first birthday.

(Acts 1931, No. 81, p. 154, § 10; Code 1940, T. 38, § 57; Acts 1961, Ex. Sess, No. 104, p. 2024, § 3; Acts 1990, No. 90-630, p. 1154, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1990 amendment, effective April 25, 1990, rewrote this section.

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 710-X-1-.09, State Pilotage Commission; Register of Applicants.

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

ANNOTATIONS

CASENOTES

"Pilotage" 1 enter p

Right to become apprentice 2 enter p

1. "Pilotage"

"Pilotage" is the performance of personal service requiring the pilot to have the highest degree of skill as a seaman, and is controlled by law. *Mobile Bar Pilots Ass'n v. Commissioner of Internal Revenue*, 1938, 97 F.2d 695. Pilots

2. Right to become apprentice

Applicant did not have constitutionally protected property interest in being placed on Alabama Register of Applicants to be considered for appointment as pilot apprentice and, ultimately, for selection as licensed bar pilot in Port of Mobile, since interest was nothing more than mere unilateral expectation of becoming apprentice. *Scott v. State Pilotage Com'n*, 924 F.Supp. 1140 (S.D.Ala.1996).

Circuit court did not have subject matter jurisdiction over suit against State Pilotage Commission contesting removal of applicant's name from register of applicants to be bar pilots in Mobile Bay; applicant had no property right to position on register. *Barry v. State Pilotage Com'n*, 706 So.2d 1234 (Ala.Civ.App.1997), rehearing denied, certiorari denied. Pilots

Failure of State Pilotage Commission to include applicant on register of applicants from which apprentices for bar pilot positions would be chosen was not the denial of a license and could not, on that basis, be considered an appealable "contested case" within meaning of the Alabama Administrative Procedure Act; moreover, Commission was not required by statutes outlining its duties to hold a hearing before determining which applicants should be placed on its register. *Scott v. State Pilotage Com'n*, 699 So.2d 196 (Ala.Civ.App.1997). Pilots

Cited in *Brady v. State Pilotage Com.*, 496 So.2d 776 (Ala.Civ.App.1985), *aff'd* 496 So.2d 780(Ala.); *Ex parte State Pilotage Com.*, 496 So.2d 780 (Ala.1986).

§ 33-4-32. Selection of apprentices. [References](#)

All apprentices, before becoming eligible for service as such apprentices, shall be selected and approved by said State Pilotage Commission.

(Acts 1931, No. 81, p. 154, § 10-B; Code 1940, T. 38, § 58.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-33. Apprentice not to be discharged except for cause; appeal of discharge.

[References](#)

No Mobile Bay or bar pilot apprentice shall be discharged except for cause, and any such apprentice or boatkeeper so discharged may appeal from such discharge to the commission, and should the commission upon an investigation find that such discharge was without sufficient cause, they may annul such discharge and reinstate such apprentice.

(Acts 1931, No. 81, p. 154, § 17; Code 1940, T. 38, § 65.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-34. Application for license, etc., to be in writing accompanied by certificate and affidavit; branching or licensing according to seniority.

[Historical Notes](#)

[References](#) [Annotations](#)

A person, to be eligible to be branched or licensed as the next bar pilot, must meet the following criteria at the time of branching or licensing:

(1) Must be the senior apprentice, with seniority to be determined by date of satisfactory completion of all requirements to be a pilot except the written examination given by the State Pilotage Commission;

(2) Must be a citizen of the United States and of Alabama;

(3) Must be of good moral character;

(4) Must have completed satisfactorily all requirements of the apprenticeship;

and

(5) Must hold and have the following current United States Coast Guard licenses and experience:

a. Either (i) an unlimited second mate of oceans license with one year's experience as third mate, or (ii) a master license of freight or motor vessel of 1,600 gross tons with one year's experience as master of vessels of at least 150

gross tons;

b. Either (i) three years' experience in a deck department capacity on one or more vessels navigating Mobile ship channel, or (ii) three years' experience at sea in a deck department capacity on oceangoing vessels of 1,600 gross tons or over, or (iii) be a graduate of a nationally recognized maritime academy holding a bachelor of science degree and have two years' experience at sea in a deck department capacity on oceangoing vessels of 1,600 gross tons or over; and

c. Must hold a first class federal pilot license for the Mobile ship channel;

(6) Must demonstrate, if required by the commission to do so, sufficient evidence of satisfactory experience in the safe navigation and handling of vessels, and must pass a practical demonstration to be administered by the active Mobile bar pilots licensed by the State Pilotage Commission showing their ability to safely pilot steam and motor vessels of unlimited tonnage and tugs with tows. The demonstration shall be deemed satisfactorily completed if two-thirds majority of the active Mobile Bay bar pilots licensed by the State of Alabama shall certify such successful completion;

(7) Must pass a written test administered by the commission; and

(8) Must make written application to be branched or licensed, accompanied by his or her affidavit that the applicant meets every statutory requirement to be branched;

(9) Must have been employed in a deck department capacity on steam or motor vessels navigating either inland waters or oceans for a majority of the last five years; and

(10) Must be a high school graduate.

(Acts 1931, No. 81, p. 154, § 11; Code 1940, T. 38, § 59; Acts 1961, Ex. Sess, No. 104, p. 2024, § 4; Acts 1990, No. 90-630, p. 1154, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1990 amendment, effective April 25, 1990, rewrote this section.

REFERENCES

ADMINISTRATIVE CODE

18 Ala. Admin. Code 710-X-1-.08, State Pilotage Commission; Statutory Interpretations.

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

ANNOTATIONS

CASENOTES

Generally 1 enter p
Discretion as to seniority of pilots 2 enter p

1. Generally

Statute is remedial in nature and was meant to clarify the procedural tasks of the commission. *Brady v. State Pilotage Com'n*, 496 So.2d 776 (Ala.Civ.App.1985), affirmed 496 So.2d 780.

2. Discretion as to seniority of pilots

This statute gave the commission no discretion when it came to the method of determining seniority of pilots. That method is specifically spelled out in the statute, and the application of the method was not subject to the discretion of the commission. *Ex parte State Pilotage Com'n*, 496 So.2d 780 (Ala.1986).

§ 33-4-35. Examination and certification generally. [References](#)

Before an applicant is branched or licensed, the commission must prepare in writing suitable questions to test his knowledge and competency to become such pilot, who, without any aid from any other person and without having been informed as to what question would be propounded to him, shall answer such questions. When the applicant has reduced his answers to writing, he shall sign the same and deliver them to one of the commissioners, and the commission must cause such answers to be copied legibly, but without the name of the applicant. The commission shall then appoint three fair, impartial and competent nautical men as a committee to examine the answers of the applicants. The applicant or applicants may name one of these, the existing pilots name another, and the commission, or a majority of them, shall name the third. The committee shall examine the copies of the answers of applicants and shall endorse upon the answer of such of the applicants as they find sufficient the following certificate: "We hereby certify that the foregoing answers are satisfactory, and that, in our opinion, the applicant making the same is well acquainted with the pilot grounds, knows how to handle both steam and sailing vessels and is competent to perform the duties of a bay or bar pilot." When such certificate is duly signed and delivered to the commission, the applicant shall be deemed qualified to receive a license.
(Acts 1931, No. 81, p. 154, § 10; Code 1940, T. 38, § 60.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-36. Apprentice pilots not required to take second examination. [References](#)

No apprentice pilot who has successfully passed an examination for a Mobile Bay or bar pilot shall be required to undergo or pass another examination before being entitled to his license or status as a Mobile Bay and bar pilot, notwithstanding the board or commissioners under which said person was examined, has been abolished.
(Acts 1931, No. 81, p. 154, § 13; Code 1940, T. 38, § 61.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-37. Issuing licenses; possession and exhibition of licenses; oath of pilot.

[References](#)

The State Pilotage Commission shall issue to each pilot licensed and branched by them an original and a duplicate certificate of his appointment, competency and authority to act as such pilot, and as to the extent thereof, and shall reissue duplicate certificates from time to time, as the occasion may require. Such original and duplicate certificates shall be signed by a majority of the commissioners or by their chairman by their direction. Each bay or bar pilot holding a license or branch must keep upon his person, when offering his services to any vessel, his duplicate certificate and must, upon demand of the proper officer of the vessel, exhibit the same and allow such officer to inspect it.

Before issuing an original license or branch, the commissioners delivering the same to the appointee shall require him to take and subscribe in writing an oath as follows, to be administered by such commissioners: "I, A. B., do solemnly swear (or affirm) that I will faithfully and according to the best of my skill and judgment perform the duties of a pilot for the Bay and Harbor of Mobile; that I will at all times, wind and weather and health permitting, use my best exertions to repair on board all vessels which I shall see and conceive to be bound for, coming into or going out of the Harbor or Bay of Mobile, unless I am well assured that some other licensed pilot is then on board the same; that I will at all times make the best dispatch in my power to convey safely every vessel committed to my charge coming into or going out of the Bay or Harbor of Mobile; and will at all times well and truly observe, follow and fulfill, to the best of my skill and judgment, all such directions as I may receive from the commissioners of pilotage relative to things appertaining to the duty of a pilot, and I will not be a member at the same time of more than one combination or partnership of pilots. So help me God."
(Acts 1931, No. 81, p. 154, § 14; Code 1940, T. 38, § 62.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-38. Levy, payment and disposition of pilot's license tax. [Historical Notes](#)
[References](#)

There is hereby levied upon each licensed pilot engaged in service as such under the provisions of this chapter a license or privilege tax in the sum of \$100.00 annually plus any reasonable additional assessment that arises and is necessarily incurred out of the performance by the pilot commission of their duties imposed by law, to be paid to the secretary of the commission and to be used for defraying all expenses and expenditures of said commission accruing under the provisions of this chapter. The commission may, by proper resolutions, permit said tax to be paid quarterly. Whenever the funds in the treasury of the commission exceed the sum of \$5,000.00, such excess shall be paid over to the Treasury of the State of Alabama. Such privilege or license taxes so paid to the secretary of said commission shall become a part of the funds of said commission and shall be deposited by the secretary and otherwise handled and disbursed, as required by the provisions of this chapter.

(Acts 1931, No. 81, p. 154, § 43; Acts 1935, No. 9, p. 11; Code 1940, T. 38, § 85; Acts 1991, No. 91-432, p. 769, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1991 amendment, effective July 29, 1991, substituted "\$100.00 annually plus any reasonable additional assessment that arises and is necessarily incurred out of the performance by the pilot commission of their duties imposed by law" for "\$25.00" in the first sentence, and substituted "\$5,000.00" for "\$2,000.00" in the third sentence.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-39. Bond of pilot -- Required; amount; conditions; renewal. [References](#)

Before receiving his branch, the pilot must make and deliver to the commissioners a bond payable to the chairman of the commission and his successors, in the penal sum of \$2,000.00, with surety to be approved by the commissioners, and with conditions faithfully to perform his duties as pilot; and this bond must be renewed every six years.

(Acts 1931, No. 81, p. 154, § 15; Code 1940, T. 38, § 63.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-40. Bond of pilot -- Preserving bonds, etc.; new bonds; actions on bonds.

[References](#)

The commissioners must preserve on file all bonds and affidavits taken from pilots, and may, whenever they consider it necessary, require a new bond to be executed. The pilot's bond stands as security for any injury caused by the negligence or want of skill of the pilot, and action may be brought thereon in the name of any person aggrieved.

(Acts 1931, No. 81, p. 154, § 16; Code 1940, T. 38, § 64.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-41. Revocation or suspension of license for cause -- Generally. [References](#)

For any violation by any pilot of any of the provisions of this chapter, or any of the rules and regulations established by the commission under the authority conferred upon the said commission by the provisions of this chapter, or under any authority which may be hereafter conferred upon said commission, the said commission may suspend or revoke the license or branch of such pilot so violating the law or such rules and regulations of said commission. The secretary of said commission shall notify such pilot in writing of the specific charge preferred against him, specifying with reasonable certainty the law or rule or regulation violated, the manner in which the same was violated, and the time and place of such offense, and shall by direction of the commission fix the time for hearing of said charges not less than five nor more than 30 days from the date of such notice. At the time and place set forth in said notice, such pilot may appear in person or by counsel, thereupon the said commission shall hear and determine the said charges. The commission may subpoena witnesses, such subpoenas to be served under the seal of said commission, and attested by the signature of the secretary, and shall be served by the Sheriff of Mobile County, or the Sheriff of Baldwin County, according to the residence of such witnesses. The fees of the sheriff for serving such subpoenas shall

be paid out of the funds of said commission.
(Acts 1931, No. 81, p. 154, § 18; Code 1940, T. 38, § 66.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-42. Revocation or suspension of license for cause -- Failure of witness to answer subpoena. [References](#)

On the failure to answer such subpoenas when so served, such witness shall forfeit the sum of \$50.00, for which the said commission may, in its own name, bring a civil action in a court of competent jurisdiction.

(Acts 1931, No. 81, p. 154, § 19; Code 1940, T. 38, § 67.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-43. Revocation or suspension of license for cause -- Witnesses' fees and mileage. [References](#)

Such witnesses shall be paid the sum of \$1.50 a day during their attendance upon such commission at such hearing, and \$.05 a mile for each mile traveled in going from their place of residence to the place of hearing and \$.05 a mile for returning. Such witness fees shall be paid out of the funds of said commission.

(Acts 1931, No. 81, p. 154, § 20; Code 1940, T. 38, § 68.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-44. Revocation or suspension of license for cause -- Issuance of subpoenas in behalf of pilot. [References](#)

Such pilot against whom such charges have been filed, upon depositing with the secretary of said commission an amount sufficient to cover the costs and expenses of serving such subpoenas, together with the mileage of such witnesses and an amount sufficient to cover at least three days' attendance of such witnesses, may require the secretary of said commission to issue subpoenas for witnesses in his behalf in the name of said commission, such subpoenas to be issued and served as in the case of subpoenas issued by the direction of the commission, and for failure of witnesses to attend upon being served with such subpoenas, the same penalty shall be imposed and collected as provided in Section 33-4-42.

(Acts 1931, No. 81, p. 154, § 21; Code 1940, T. 38, § 69.)

REFERENCES

CROSS REFERENCES

As to rules of the supreme court relative to service of process, see A.R.C.P., Rule 4, et seq.

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-45. Revocation or suspension of license for cause -- Hearings; decision of commission. [References](#)

Such hearing shall be conducted under such rules and regulations as the commission may from time to time establish. The commission shall hear the testimony of the witnesses and may administer oaths to such witnesses, and false swearing, after the administration of such oath by such commission, shall constitute perjury under the laws of this state.

Said pilot may be represented by counsel at such hearing.

Upon completion of the hearing, or as soon thereafter as practicable, the commission shall render its decision, and the decision shall be by a majority of said commission.

The said hearing may be adjourned from time to time as the commission may direct, but no pilot shall be suspended until the final hearing by the commission.

(Acts 1931, No. 81, p. 154, §§22-25; Code 1940, T. 38, § 70.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:
C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-46. Grounds for depriving pilot of branch. [References](#)

The commission may deprive any pilot of his branch for a willful violation of his duties, or the orders or regulation of the commissioners, or for negligently losing or injuring any vessel in his charge; or when laboring under mental derangement or when so addicted to habits of intoxication as to be unfit to be intrusted with the charge of a vessel. Any pilot who fails to act as such for three months, or absents himself for 10 days at any one time from the Bay or Harbor of Mobile without leave of the commissioners, may be deprived of his branch. And if, while a vessel in the Bay or Harbor of Mobile is in charge of any civil officer by virtue of process from any court of record in this state, any pilot, with knowledge thereof, conducts or pilots such vessel out of the bay or harbor, he forfeits his branch, and is forever disqualified from acting as a pilot, and forfeits such sum of money as the jury may assess.

(Acts 1931, No. 81, p. 154, § 26; Code 1940, T. 38, § 71.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 6-7.

§ 33-4-47. Penalty for acting without license. [References](#) [Annotations](#)

Any person who pilots a foreign vessel, or an American vessel under register, or any other vessel subject to the payment of pilotage fees under the provisions of this chapter, entering or leaving the Port of Mobile, in or out of the Bay of Mobile or over the outer bar thereof, without a license from the State Pilotage Commission, is guilty of a misdemeanor and is entitled to no fee or reward for such services and, upon conviction of such misdemeanor, shall be fined not less than \$50.00 and not more than \$500.00 for each offense and shall be sentenced to hard labor for the county for a period of not less than 30 days and not more than 60 days.

(Acts 1935, No. 503, p. 1083, § 1; Acts 1936, Ex. Sess., No. 42, p. 25, § 1; Code 1940, T. 38, § 73.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

ANNOTATIONS

CASENOTES

Indictment 1, 2 enter p
 Indictment - Generally 1..... enter p
 Indictment - Negating of statutory exceptions 2..... enter p
Negating of statutory exceptions, indictment 2 enter p

1. Indictment--Generally

Counts of an indictment, which were, substantially, in the language of this section and which prescribed with definiteness the constituents thereof, were not subject to a motion to dismiss. *Dorgan v. State*, 29 Ala.App. 362, 196 So. 160 (Ala.App.1940). Indictment And Information 110(30)

2. --- Negating of statutory exceptions, indictment

Indictment is not required to negative statutory exceptions where such exceptions are set out in sections other than that creating and defining the offense. *Dorgan v. State*, 29 Ala.App. 362, 196 So. 160 (Ala.App.1940). Indictment And Information 111(3)

It is unnecessary to negative exemptions existing by reason of federal law. *Dorgan v. State*, 29 Ala.App. 362, 196 So. 160 (Ala.App.1940).

Where two counts of indictment properly stated the offense and two counts were allegedly defective because some but not all of the exemptions and exceptions then by law existing were set out therein and the same evidence was required to prove offense under each of the counts of the indictment, verdict of conviction, being a general one, would be referred to the good counts. *Dorgan v. State*, 29 Ala.App. 362, 196 So. 160 (Ala.App.1940). Indictment And Information 203

§ 33-4-48. Pay of pilots -- Generally. [Historical Notes](#) [References](#)

(a) The master, owner, agent, or operator of any ship or vessel shall pay the pilot who conducts a vessel into or out of the Bay or Harbor of Mobile a fee to be fixed by the State Pilotage Commission at the following rate for actual draft of water at the time of pilotage for every vessel crossing the outer bar of Mobile Bay: From April 17, 2002, and thereafter, the sum of twenty-seven dollars (\$27) per draft foot. The minimum pilot fee shall be computed on a minimum of 15 feet regardless of whether or not the vessel has a draft of less than 15 feet at the time of pilotage.

(b) In addition to the pilotage fee based on the draft of the vessel, there shall also be paid to the pilots the following pilotage fees for every vessel crossing the outer bar of Mobile Bay: From April 17, 2002, to March 28, 2003, the sum of three cents (\$.03) per ton for each of the vessel's maximum registered gross tons; from March 29, 2003, to March 28, 2004, the sum of three and one-quarter cents (\$.0325) per ton for each of the vessel's maximum registered gross tons; from March 29, 2004, to March 28, 2005, the sum of three and one-half cents (\$.0350) per ton for each of the vessel's maximum

registered gross tons; and from March 29, 2005, and thereafter, the sum of three and three-quarter cents (\$.0375) per ton for each of the vessel's maximum registered gross tons. The minimum pilot fee shall be computed on a minimum of 6,500 maximum registered gross tons, regardless of whether or not the vessel has a maximum registered gross tonnage of less than 6,500 maximum registered gross tons.

(c) In addition to the foregoing fees, the State Pilotage Commission shall set fees for special services rendered by the pilots to vessels which are incidental to or connected with vessels being conducted into or out of the Bay or Harbor of Mobile which include, but are not limited to, docking and undocking, going on and off drydock, turning the vessel, shifting, anchorage and stand-by, and delayed sailing.

(d) Vessels trading between any domestic port on the Gulf of Mexico and the Port of Mobile, drawing seven feet or less of water shall not be required to employ a pilot, but if a pilot is employed, the regular pilotage shall be paid. No fishing smack shall be subject to pilotage.

(Acts 1931, No. 81, p. 154, § 32; Code 1940, T. 38, § 77; Acts 1951, No. 188, p. 449, § 1; Acts 1959, No. 333, p. 926, § 1; Acts 1967, No. 234, p. 610, § 1; Acts 1971, 1st Ex. Sess., No. 56, p. 94, § 1; Acts 1975, 2nd Ex. Sess., No. 33, p. 161, § 1; Acts 1977, No. 145, p. 208, § 1; Acts 1979, No. 79-95, p. 118, § 1; Acts 1981, No. 81-179, p. 215, § 1; Acts 1983, No. 83-500, p. 703, § 1; Acts 1988, No. 88-128, p. 183, § 3; Acts 1989, No. 89-518, p. 1064, § 1; Acts 1993, No. 93-650, p. 1124, § 1; Acts 1997, No. 97-669, p. 1292, § 1; Act 98-279, p. 457, § 1; Act 99-203, p. 261, § 1; Act 2002-342, p. 919, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1993 amendment, effective May 13, 1993, rewrote this section.

The 1997 amendment, effective May 29, 1997, substituted "1997" for "1993" throughout; in subsection (a) substituted "1995" for "1988", substituted "1998" for "1994" in two places, substituted "1999" for "1995" in two places, substituted "twenty-two dollars (\$22)" for "\$19.00", substituted "twenty-three dollars (\$23)" for "\$20", substituted "twenty-four dollars (\$24) per draft foot;" for "\$21 per draft foot; and", substituted "to the effective date of the act amending this code section" for "and thereafter", and substituted "twenty-five dollars (\$25) per draft foot; and effective March 29, 2000, and each year thereafter, the sum of twenty-six dollars (\$26) per draft foot" for "\$22 per draft foot"; in subsection (b) substituted "and one-half cents (\$.025)" for "cents", substituted "three cents (\$.03)" for "two and one-half cents (\$.025)"; and in subsection (d) substituted "a pilot is employed, the" for "they do, their".

The 1998 amendment, effective April 13, 1998, in subsection (a) substituted "March 29, 1998, the sum of twenty-three dollars (\$23) per draft foot; from March 29, 1998, to March 29, 1999, the sum of twenty-four dollars (\$24) per draft foot; effective March 29, 1999, to March 29, 2000" for "March 28, 1998, the sum of twenty-three dollars (\$23) per draft foot; from March 29, 1998, to March 28, 1999, the sum of twenty-four dollars (\$24) per draft foot; effective March 29, 1999, to the effective date of the act amending this code section".

The 1999 amendment, effective May 20, 1999, restored subsections (b) through (d).

The 2002 amendment, effective April 17, 2002, in subsection (a) substituted "rate" for "rates", deleted the matter following "Bay:" and added the penultimate sentence; in subsections (a) and (b) inserted "State" preceding "Pilotage"; and in subsection (b) deleted the matter following "Bay:" and added the penultimate sentence.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 12, 15.

§ 33-4-49. Pay of pilots -- Time of payment. [References](#)

A pilot who has brought a vessel into port is entitled to his fees before her departure from port, to be paid in advance, or security given for the payment and, on failure thereof, may refuse to carry the vessel out.

(Acts 1931, No. 81, p. 154, § 33; Code 1940, T. 38, § 78.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 12, 15.

§ 33-4-50. Pay of pilots -- Fees of pilots detained on vessels. [References](#)

If the master of any vessel retains a pilot on board, the wind and weather permitting her going to sea, the pilot is entitled to \$50.00 for every day of such detention. If a master carries off a pilot from the Bay or Harbor of Mobile, he must pay him \$50.00 for every day of such absence and supply him with such provisions as is usual for the maintenance of masters, and first class transportation back to Mobile, Alabama, the master as well as the owner being liable therefor, unless the vessel has laid to for the space of four hours after crossing the bar, and no pilot boat appears to receive the pilot on board.

(Acts 1931, No. 81, p. 154, § 39; Code 1940, T. 38, § 81; Acts 1959, No. 334, p. 927, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 12, 15.

§ 33-4-51. Pay of pilots -- No discrimination or rebating of pilot's fees. [References](#)

There shall be no discrimination among vessels subject to the payment of pilotage fees, and any person who rebates any pilotage fees or seeks a rebate of pilotage fees or in any manner creates or aids in creating any scheme or plan by which a discrimination is effected in favor of any vessel or the owners, masters or operators thereof shall, on conviction, have his license or branch revoked.

(Acts 1931, No. 81, p. 154, § 42; Code 1940, T. 38, § 89; Acts 1943, No. 380, p. 357, § 1; Acts 1951, No. 188, p. 449, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 12, 15.

**§ 33-4-52. Pay of pilots -- Exemptions from payment of pilot's fees. [References](#)
[Annotations](#)**

All vessels, whether sail, steam or propelled by any other motive power, including vessels, barges and rafts in tow, engaged in coastwise trade, including those engaged in trade or plying upon the navigable rivers of the State of Alabama, and all vessels exempt under the laws, rules or regulations of the government of the United States shall be exempt from payment of any pilotage fee whatsoever and shall not be required to have the services of a pilot in crossing the outer bar of Mobile Bay or navigating the waters of said bay or other navigable waters of the State of Alabama.

(Acts 1931, No. 81, p. 154, § 41; Code 1940, T. 38, § 83.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels §§ 12, 15.

ANNOTATIONS

CASENOTES

Pilot status 1 enter p

1. Pilot status

Status of Mobile bar pilot under Alabama law was that of a voluntary pilot as opposed to a compulsory pilot, absent showing by tug towing barge that he was in fact a compulsory pilot. *Crowley American Transport, Inc. v. Double Eagle Marine, Inc.*, 208 F.Supp.2d 1250 (S.D.Ala.2002). Pilots

§ 33-4-53. Compulsory retirement of bar pilots. [References](#) [Annotations](#)

Every bar pilot licensed and branched by the State Pilotage Commission upon reaching the age of 68 years shall be required to retire and surrender his license or branch to the State Pilotage Commission.

(Acts 1961, Ex. Sess., No. 103, p. 2023, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 2.

ANNOTATIONS

CASENOTES

Constitutionality 1 enter p

Relationship to other laws 2 enter p

1. Constitutionality

As to constitutionality, see *Adams v. Leatherbury*, 388 So.2d 510 (Ala.1980).

2. Relationship to other laws

The state's interest in promoting the public safety in its harbors and on its waterways is sufficiently broad to permit the state to require the retirement of bar pilots at age 68; thus, the mandatory retirement age for bar pilots would be a "bona fide occupational qualification," and the Federal Age Discrimination in Employment Act (29 U.S.C.A § 623 et seq.), even if preemptive, would not apply, because of the "bona fide occupational qualification" exemption. *Adams v. Leatherbury*, 388 So.2d 510 (Ala.1980). Civil Rights 172

Legislative determination that bar pilots should retire at age 68 meets the requirements of the Federal Age Discrimination in Employment Act (29 U.S.C.A. § 623 et seq.) which places the burden on the employer to show a factual basis for believing

that all or substantially all persons within the class would be unable to perform safely and efficiently the duties of a bar pilot. *Adams v. Leatherbury*, 388 So.2d 510 (Ala.1980).
Civil Rights 172

§ 33-4-54. Vessels required to take pilots. [References](#) [Annotations](#)

All steam or sail vessels crossing the outer bar of Mobile Bay, except those exempt under this chapter, shall be conducted, controlled or navigated by a pilot licensed by or under authority of the laws of the State of Alabama, if the services of a pilot are seasonably tendered or are seasonably available and shall be required to pay the full amount of pilotage now provided by law.

(Acts 1931, No. 81, p. 154, § 40; Code 1940, T. 38, § 82.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 8.

ANNOTATIONS

CASENOTES

Cited in *Mt. Washington Tanker Co. v. Wahyuen Shipping, Inc.*, 833 F.2d 1541, 1988 A.M.C. 1601 (11th Cir. Ala.1987).

Pilot status

1. Pilot status

Status of Mobile bar pilot under Alabama law was that of a voluntary pilot as opposed to a compulsory pilot, absent showing by tug towing barge that he was in fact a compulsory pilot. *Crowley American Transport, Inc. v. Double Eagle Marine, Inc.*, 208 F.Supp.2d 1250 (S.D.Ala.2002). Pilots

§ 33-4-55. Pilot boats must offer services to vessels nearest bar. [References](#)

Every pilot boat cruising or standing out to sea must offer service of a pilot to the vessel nearest the bar, unless a vessel more distant is in distress, under penalty of \$50.00 for every neglect or refusal to approach such nearest vessel, to aid her if required, or to aid a vessel in sight showing signals of distress, and the commissioners may deprive a pilot so offending of his license.

(Acts 1931, No. 81, p. 154, § 34; Code 1940, T. 38, § 79.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 13.

§ 33-4-56. Delivery of orders and letters by pilot. [References](#)

It is the duty of every outer-bar pilot to deliver to the master of any and every vessel approaching the Bay or Harbor of Mobile, as soon as he can board such vessel, all orders and letters which may be sent him for that purpose, on the person who requires the delivery of such letters paying or securing to the pilot \$20.00 for such service, unless the pilot so employed to deliver such orders and letters is engaged as pilot for the vessel, in which event he is entitled to \$5.00 for such service.

(Acts 1931, No. 81, p. 154, § 35; Code 1940, T. 38, § 80.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots.

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 9.

§ 33-4-57. Report of unlawful discharge of ballast, sweepings, rubbish, etc., in bay, etc. [References](#)

Every pilot, having knowledge of the discharge of ballast, sweepings, screenings, cinders, refuse and rubbish of any kind in the Bay of Mobile or in any river emptying into the same, contrary to the law, must, as soon as practicable, give information thereof to the District Attorney of Mobile County.

(Acts 1931, No. 81, p. 154, § 27; Code 1940, T. 38, § 72.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Pilots

Corpus Juris Secundum:

C.J.S. Pilots of Vessels § 9.

Board Members

STATE PILOTAGE COMMISSION PORT OF MOBILE

EDWARD E. FIELDS, CHAIRMAN
DWAIN C. DENNISTON
G. WILDON MARENO

JACKIE M. BUETTEL, SECRETARY



P. O. BOX 273
MOBILE, ALABAMA 36601

Current Commissioners:

Edward E. Fields, Chairman
Director, Governmental Affairs
Mobile Gas Service Corporation
Post Office Box 2248
Mobile, Alabama 36652
Term of Office 03/28/00 – 03/28/06
Appointed by Governor Siegelman
Phone 476-8052
Direct Line 450-4753
Fax 471-9341
Secretary Marie

Dwain C. Denniston, Commissioner
Kerr Norton Strachan Shipping
Post Office Box 1209
Mobile, Alabama 36601
Term of Office 02/15/02 – 01/31/08
Appointed by Governor Siegleman
Phone 433-5401
Fax 433-9408

G. Wildon Mareno, Commissioner
Mobile Bar Pilots, LLC
3725 Kentan Drive
Mobile, Alabama 36608
Term of Office 12/11/03 – 03/28/06
Appointed by Governor Riley
Phone 342-7097
Fax 414-4561

SPC Counsel:

Jeffrey Hartley
Frederick G. Helmsing
Helmsing, Leach, Herlong,
Norman & Rouse, P.C.
150 Government Street
Mobile, Alabama 36602
Phone 432-5521
Fax 432-0633

SPC Secretary

Jackie M. Buettel
Post Office Box 273
Mobile, Alabama 36601
Phone 432-2639
Fax 432-9964